block in New Bridge Road, comprising eight houses, numbered (by odd numbers), from 35 to 49. The plan provides for the demolition of the existing buildings and for the re-building on 99 year leases of seven houses where previously stood eight, because the new buildings are required to have a width of 16 feet in order to comply with the Municipal By-Law of 1907 instead of the existing width of 14 feet or thereabouts. The other premises in the block have already been demolished and re-building is in progress in the case of Nos. 39, 41, 43, 45, 47 and 49 and has actually been completed in the case of No. 35. Only No. 37 stands apart, immune and protected from this development, so the defendants maintain, by the provisions of the Control of Rent Ordinance. To this argument the plaintiffs reply that paragraph (k) of sub-section (1) of section 15 was introduced by way of amendment to the Ordinance in 1953 for the very purpose of facilitating the carrying out of schemes for town improvement such as this and that the present case falls exactly within the four corners of that paragraph. In my view this contention is sound. It has been clearly established in my opinion, that the plan drawn up for this area in 1941 was a plan for town improvement and that the present proposals for the demolition and re-building of No. 37 are a small, but nevertheless, an integral part of that plan. The demolition and re-building of No. 37 is, therefore, necessary for the implementation of the plan and consequently the demolition of these premises is necessary in the interests of town improvement and accordingly the provisions of paragraph (k) apply to this case.

I should, perhaps, refer to an argument advanced by the defendants to the effect that paragraph (k) does not apply in a case where the dominant motive of the landlord is not to re-build but to acquire a new and valuable lease for 99 years. In support of this argument the defendants relied upon the English case of *Atkinson v. Bettison*[1]. This is a decision on the United Kingdom Landlord and Tenant Act 1954 in which the Court of Appeal decided that a landlord could not oppose an application by a tenant for a new lease on the ground that he intended to reconstruct the premises if his main purpose was not to reconstruct but to obtain possession for his own business. The short answer to defendants' argument on this point is that the case of *Atkinson v. Bettison*[1] is a decision on the provisions of a United Kingdom statute which are entirely different from the provisions of paragraph (k) of sub-section 1 of section 15, not only as regards the wording of the provisions but as regards the policy and objects of the legislation. The United Kingdom statute is not, in my view, *in pari materia* and decisions upon it afford no guidance to the interpretation of paragraph (k) of sub-section (1) of section 15.

For these reasons I am of the opinion that the plaintiffs are entitled to an order for possession of No. 37 New Bridge Road and there will be judgment for the plaintiffs accordingly. The plaintiffs must have the costs of these proceedings.

Claim allowed.

Solicitors: *Lee & Lee; R. C. H. Lim & Co.*

GULAZAM v. NOORZAMAN AND SOBATH

[O. C. J. (Abdul Hamid J.) November 29, 1956]

[K. L. — Civil Suit No. 41 of 1956]

Partnership — Claim for partnership — Partnership business not registered — Statutory defence under s. 8 of Registration and Licensing of Business Ordinance, 1953.

In this case the plaintiff claimed that the defendants who were cattle dealers had made arrangements to form a partnership among the three of them to purchase keep and sell cattle. The defendant denied the existence of the partnership and also raised a statutory defence under section 8 of the Registration and Licensing of Business Ordinance, 1953 that the plaintiff's claim was not maintainable as the partnership business had not been registered.

Held: (1) on the facts a partnership existed between the parties;

(2) section 8 of the Registration and Licensing of Business Ordinance, 1953 does not affect the right of one partner in a firm which has failed to comply with the Ordinance to bring an action against his co-partners.

Case referred to:—

(1) *Sterios Thomopulos & Anor. v. John Mandilas* (1948) A.C. 12.

CIVIL SUIT.

S. D. K. Peddie for the plaintiff.

J. G. Bentley for the defendants.

Abdul Hamid J.: —In this Suit the parties are Pathans. The plaintiff who is an ex-police constable and a watchman on a rubber estate asserted that on the 3rd of June, 1948, both defendants who are cattle dealers saw him and made arrangements to form a partnership among the three of them to purchase, keep and sell cattle. The conditions were that the plaintiff was to provide $200 as capital to purchase the cattle, and both the defendants to look after it and sell it and the profits to be divided among them in equal shares. Accordingly, a verbal agreement of partnership was entered into on the 6th June, 1948 when the plaintiff provided the necessary capital. Between April, 1950

and 17th November, 1953, he received some share of the profits, paid in small sums from time to time, amounting to $550. No account was rendered or gone into. He made several attempts to obtain from the defendants accounts of the partnership business in the presence of their fellow-countrymen. He even sought the good offices of an Imam of their own sect and the Kathi of Kuala Lumpur to effect a settlement between him and the defendants. All those were of no avail, so the plaintiff instituted this suit in January, 1956, praying for an account to be taken and payment of any sum of money found due to him.

The defence of both defendants at first was only a complete denial of the existence of the partnership, but at the beginning of the trial, with the consent of plaintiff's counsel, an amended statement of defence was accepted in which a statutory defence under section 8 of the Registration and Licensing of Businesses Ordinance, 1953 was set up to the effect that the plaintiff's claim was not maintainable as the partnership business had not been registered.

Plaintiff produced six witnesses in spite of his statement to the Kuala Lumpur Kathi (D.W.1) on 24th December, 1955 that he had no witnesses to the transaction. Of those witnesses one (P.W.3) spoke of overhearing the conversation in an eating shop at Serdang between the plaintiff and the defendants of the partnership and of seeing plaintiff handing $200 to the second defendant. Another witness (P.W.5) spoke of the plaintiff telling him in a coffee shop, in the presence of both defendants, that he had given the defendants $200 in relation to a business in which he held a share. Three witnesses (P.W.1, P.W.2 and P.W.7) testified to being present at a gathering in a railway godown on 17th June, 1953, where both defendants admitted the existence of the partnership but maintained that the plaintiff had been paid more than his share. The sixth witness was the Imam (P.W.6) who said that in his attempt to effect a settlement the second defendant admitted the partnership. None of those witnesses could be described, except perhaps P.W.3, as being a witness to the transaction itself. But then P.W.3 happened to be in the same eating shop, was seated at a different table and took no part in the discussion. I was satisfied from their demeanour that they are sincere witnesses and were not procured specially for this case. It is unthinkable that the Imam would perjure himself. On the facts I found that a partnership existed between the parties.

As regards the statutory defence, I consider it should fail in the light of the Privy Council judgment in *Sterios Thomopulos & Anor. v. John Mandilas*[1], where the question of a provision corresponding to section 8 of the Registration and Licensing of Businesses Ordinance, 1953 was decided. The following appears in that judgment:—

> "Their Lordships read section 14 as referring only to claims made by the defaulting firm against third parties. They can find no provision in the Ordinance which affects the right of one partner in a firm, which has failed to comply with the Ordinance, to bring an action against his co-partners, and they see no reason why any such provision should be implied."

Counsel for the defendants raised two additional defences in his final address, one of which was that the plaintiff being a police constable at the time was prohibited from entering into business, and the other was laches. I dismissed both of them not only because they were not pleaded but also in so far as delay was concerned the evidence of the plaintiff, which I have accepted as being true, explained that he would rather have the dispute settled outside than resorting to Court. The other defence is answered by the fact that there was no prohibition such as there is in section 15 of the Police Ordinance.

I therefore gave judgment for the plaintiff as claimed, except for interest. I also decreed that the partnership be dissolved and awarded costs to the plaintiff against both defendants.

Claim allowed.

Solicitors: *Bannon & Bailey; Shearn, Delamore & Co.*

ONG KENG HUAT v. SHAW & SHAW LTD.

[C. A. (Mathew C.J. (F.M.), Whyatt C.J. (S) and Rigby J.) September 26, 1956]

[Penang — F.M. Civil Appeal No. 22 of 1956]

Landlord and Tenant — Claim for possession on ground that rent lawfully due is in arrear — Waiver of tender of rent — Effect of — Claim for double rent — Civil Law Ordinance (S.S. Cap. 42), s. 13(4) — Control of Rent Ordinance, 1948, ss. 13 & 14.

In March 1952 the respondents purchased certain premises of which the appellant was the monthly tenant. From April to November 1952 the monthly rent was tendered to and accepted by the respondent. On October 13, 1952 the respondents through their solicitors gave notice to quit to the appellants, terminating the tenancy on November 30, 1952. Thereafter the monthly rents for December 1952 and January to April 1953 inclusive were tendered to and refused by the respondents through their solicitors. On May 11, 1953 the appellant's solicitors wrote to respondents' solicitors enclosing a cheque for the monthly rent for May. The letter pointed out that the monthly rent for the last five months had been tendered and refused and asked if the respondents would agree to waive all future tenders of rent. The respondents' solicitors replied returning the cheque for the May rent and stating that the respondents were prepared to agree to waive future tenders of rent. On October 8, 1954 the respondents' solicitors wrote to appellant demanding payment of arrears of rent. The appellant in his evidence said that he did not see this letter till January 1955.* On October 26, 1954 a notice to quit was sent to the appellant. Subsequently the respondents instituted proceedings against the appellants. The trial Judge made an order for recovery of possession of the premises and for payment of arrears of rent and *mesne profits*. The appellant appealed.